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THE ISSUES/SMOKING

If cigarette advertisements are required to comply with the same standards for truthfulness as other industries, then, and only then, will they be held responsible for false claims.

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By Rep. THOMAS A. LUKEN

The time has come for Congress to declare an objective of a smoke-free society. We will not achieve that goal until the tobacco companies are held legally responsible for their misdeeds.

When a deceased smoker's family sues a tobacco company for wrongful death, they encounter a legal shield of immunity protecting the cigarette company. Congress created that protective armor for the tobacco industry when it passed the Federal Cigarette Labeling and Advertising Act in 1965. Under that law the courts have said that a tobacco company can issue blatantly false and deceptive advertising, and then be absolved of liability by placing a warning label on the cigarette package.

Yet no other industry — not even "smokeless tobacco" products such as snuff and chewing tobacco — enjoys such a shield.

If cigarette advertisements are required to comply with the same standards for truthfulness as other industries (as provided in my bill, the Cigarette Testing and Liability Act of 1988, H. R. 4543), then, and only then, will they be held responsible for false claims in advertising.

Cigarettes are the most dangerous product sold in the United States. The Surgeon General of the United States says that 320,000 Americans die each year from smoking. By comparison, only about 4,000 Americans die each year from cocaine and heroin. In addition to causing these 320,000 deaths each year, smoking-related diseases, according to the United States Office of Technology Assessment, cost $65 billion in extra medical costs and loss of productivity each year.

The absurdity of the current situation for cigarette advertisements is illustrated by the recent trial in New Jersey, where a federal jury awarded Antonio Cipollone $400,000 in damages because of his wife's death in 1984. Rose Cipollone began smoking Liggett & Myers' cigarettes in 1942. In 1968 she switched to Philip Morris brand. In 1974 she began smoking a Lorillard brand. They jury found that her death from lung cancer in 1984 was caused by smoking. However, while the jury found Liggett & Myers was responsible for her death, Philip Morris and Lorillard were held not responsible because she didn't smoke their cigarettes before 1966.

My bill also would make it clear that state and local governments can use their traditional power to protect the health of their citizens by regulating cigarettes in the same way they regulate other products. The need for such granting of authority to the states was highlighted when witnesses at a recent hearing told us that cigarette companies have warned local governments that they cannot pass laws prohibiting the distribution of free cigarette samples. Many state and local governments want to ban free cigarette samples as a means of preventing juveniles from obtaining these harmful products. We also heard testimony that the cigarette companies told the Maine Legislature that under federal law Maine could not restrict advertising of cigarettes in connection with children's skiing events.

If my bill does not pass, it will be a testament to the wealth and power of the tobacco industry. In 1985, the last year for which figures are available, the cigarette industry earned profits of $2.45 billion. In 1986 the cigarette industry spent $2.4 billion advertising and promoting cigarettes. The tobacco companies are reported to have spent $50 million just in defending the New Jersey lawsuit involving Mrs. Cipollone.

Yet, in our system of government the voters are more powerful. I urge you to let your congressman and senators know whether you think the tobacco companies should be held responsible when smokers die after they have been lulled into a false sense of security as a result of false and deceptive cigarette advertising.

Rep. Thomas A. Luken, D-Ohio, is chairman of the House Energy and Commerce subcommittee on transportation, tourism and hazardous materials. This was written for Scripps Howard.

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